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The Police State Implications of the Passport Cases

I

The right to travel abroad was argued before the U. S. Supreme Court for the first time last week. Three passport applicants were heard: the famous artist Rockwell Kent, the psychiatrist Dr. Walter Briehl and a physicist, Weldon Bruce Dayton. Kent and Dr. Briehl were denied passports by the State Department after they refused to sign a non-Communist affidavit. Dayton was denied a passport even though he did sign such an affidavit.

The cases involve two questions. One is whether the State Department can refuse passports on political grounds because it is suspicious of a man's associations and opinions. The other, which turns up strongly in the Dayton case, is whether the denial of a passport can be based on faceless informer evidence which is not disclosed to the applicant. Thus the right to fair trial as well as the right to travel is at stake.

Not Just a Matter of Tourism

The right to travel is more than a question of tourism. Dayton has been trying to go abroad in order to take a job in cosmic ray physics at the Tata Institute in India. The denial of the passport is not only costing him his job in India but the web of suspicion woven around him has made it impossible for him to find work as a physicist at home. Dr. Briehl was refused a passport to attend a psychoanalytic conference in Geneva. This affects his professional reputation. Much of Kent's best work as a writer and artist has been based on travel to out-of-the-way places; for the last seven years he has been refused permission to travel abroad. Similarly William Worthy's pending passport suit and Anna Louise Strong's newly filed action involve their careers as foreign correspondents. Thus the State Department's power may affect the right to practice one's profession.

The passport power also casts a shadow across the First Amendment. The allegations against Kent and Dr. Briehl involve no charge of any crime but are based upon their associations and opinions. In explaining why a passport was refused Kent, the Department alleged that his "prolific writings" showed his "sympathetic support for the Soviet." Among the more concrete allegations was the signing of a petition urging a ban on the atomic bomb. Dr. Briehl was alleged among other things to have been a member of the St. Louis Bookshop Association, written articles (in 1936 and 1941) for "Social Work Today" and been "a contact" —whatever that means—of the Los Angeles Committee for the Protection of the Foreign Born. Such allegations serve notice on other Americans that if they exercise their rights in ways of which the government does not approve, it may cost them their right to travel. In this way the State Department restricts at home the fundamental freedoms about which it is so eloquent abroad.

The Essential Issues

"The Secretary [of State] proposes to continue restricting the personal liberty of a citizen because statements by informants whom the Secretary does not identify have led him to think that if the citizen goes abroad he will do something, the nature of which the Secretary does not suggest, which the Secretary thinks, for reasons known only to him, he conceives to be the 'national interest.' . . . May the government deprive a citizen of his constitutional right to bo abroad (1) without a jury trial, (2) without a definite standard of guilt, (3) without sworn testimony, and (4) without an opportunity to confront his accusers or know their identity? May it deprive him of this liberty because of the way he has exercised his First Amendment rights of free speech, press and assembly?"

—Chief Judge Edgerton, dissenting in Briehl v. Dulles, Court of Appeals (D. of C.)

II

The excuse for these restrictions on the right to travel is that the right has been abused. The government charges in the *Kent* and *Briehl* brief that American passports have been utilized by some Communists in past years to carry on espionage and revolutionary activities abroad. But this problem is in no way different from that arising in other areas of the criminal law. Passports have also been utilized for smuggling, for the import of narcotics, and for many other forms of illegality. Those who misuse them should be punished when their crime is proven, and the government itself—in recalling the Browder and Warszower passport convictions—serves to remind us that Communists have been sent to prison for passport frauds. But to refuse people the right to travel because they *might* commit a crime is to make a fundamental break with free traditions.

When a crime has been committed or attempted, it is susceptible of proof. Tangible evidence may be presented in a court of law. But how do you prove that a man *might* commit a crime? This is the specialty of police states, Fascist or Communist, which practice "preventive detention." No doubt the government could cut down on any number of serious crimes if it could ignore constitutional guarantees, raid people's homes at night without a warrant and lock up large numbers of persons whose associations they suspect.

Constitutions and bills of right are always an inconvenience to the police. They originate however in bitter experience. Arrests on suspicion, "class justice," secret evidence and star chamber proceedings are a story as old as Nero's

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What Dulles Is Really Afraid of In A Summit Conference

The real question, which foreign diplomats put in private, is why the U. S. does not go through the motions of a summit conference. There is little prospect of agreement, and there are always ways of preventing an agreement even if the Russians should give in—as they have many times—on questions of substance. Once the summit conference fails, heads of the NATO States could tell their people, "See, we have tried but failed. Now there is no other course left open but accepting missile bases and nuclear arms."

The answer, as it is given in private, is that Mr. Dulles fears the Russians will not let the conference come to any such clear ending, that they will open the doors to further negotiation, that committees to study knotty problems may be set up, and that the net effect will be (1) to keep hope of agreement alive and therefore (2) to block the nuclear armament of West Europe, particularly Germany, while negotiations with Moscow go on.

Such a denouement could be avoided, of course, if the British were prepared to be as brusque as Mr. Dulles. But they are not. For Britain, unlike the U. S., is too poor for a guns-and-butter economy; it fears the arms race will wreck its postwar recovery; and it fears a resurgent Germany.

Ike and Dulles Now Admit That Inspection Is Possible

The longer that public clamor here and abroad continues, the clearer it becomes that the real issue is not testing or inspection but simply that our vast military machine is determined to go on ad infinitum developing all the possibilities of nuclear warfare.

In this respect Senator Humphrey has performed a major public service of which few will be aware. He has smoked out the Administration. The Stassen "task force" studies on the possibility of inspecting a cessation of tests and a cessation of nuclear production have been kept secret but the Humphrey subcommittee is getting much the same information by subpoenaing officials who worked on these studies.

Hence the changed tone of the President and of the Secretary of State. Both now grudgingly admit that inspection is possible, and have shifted their grounds. Now the excuse for continued tests (as in the Dulles press conference of April 8 and Ike's of April 9) is that we cannot stop them until—as the President said—the scientists tell him "whether they had largely or almost completely found out things they wanted to know."

That point is still a long way off. Mr. Dulles was asked the day before whether it was hoped that we might learn enough from our forthcoming series of tests so that we could without risk suspend further tests when they were over. Mr. Dulles replied "there is a likelihood that there will be a need for some further testing in some of the areas which probably will not be fully explored."

This is flim-flam. Is there ever a point in any technology where new problems will not beckon further study, experiment and improvement? AEC Commissioner Libby was more candid when he told the Humphrey subcommittee in executive session March 6 he was against an end of testing even if we could get a foolproof agreement with the Russians because "if you stop testing, you are stuck with . . . the present arsenal and that is just about it." As General Twining, chairman of the Joint Chiefs of Staff told the *U. S. News & World Report* (April 18), "Only by continuous testing can the versatility of our atomic weapons be increased."

The Full Truth About the Clean Bomb Is Also Coming Out

The Humphrey subcommittee is also smoking out the full truth about the so-called clean bomb. When the President on April 9 was asked about the proposal by Senator Case of New Jersey to test "only clean defensive nuclear weapons" in the future, he replied that "in all honesty" we "call them clean weapons" but there is still "a percentage of what you would call a dirty residual . . . so I don't think you could just start off by saying, 'you can test only clean weapons'."

The meaning of this obscure reply becomes clearer if one looks at the executive session testimony given the Humphrey subcommittee on March 12 by Brig. Gen. Alfred D. Starbird, the AEC's director of military application, and released here April 14 in a highly censored form.

That testimony shows that if the President had been really frank he would have said we could not limit testing to clean weapons because we don't have any. The General said flatly, "We have no clean tactical weapons." Apparently we have succeeded only in "cleaning up" the big ones. He also admitted that while he talked of clean weapons, "I should emphasize that as of now we see no way of making a weapon completely clean." This throws new light on Teller's claim that if only testing were continued a few years longer we could have clean nuclear weapons.

The General went on to say "Yet it appears entirely possible to reduce the area of fatal radioactivity to approximate the area of fatal blast and burn. In other words, to pull it down so the radioactivity has the same basic area of fatal hazard as you would have from that size of weapon for burn or blast. [Deleted]."

Even without knowing what further admissions were deleted by the censor, it is obvious that despite all the recent talk about a clean bomb (which deceived even a Republican Senator like Case who is close to the President), we must be a long way from it if the best Gen. Starbird can say is that *"it appears entirely possible"* to limit the area of "fatal" fallout to the area of burn and blast.

Would there still be some less-than-fatal fallout outside this area? The censored transcript gives no clue. But even limiting "fatal' fallout "to approximate the area of fatal blast and burn" would still leave it covering quite an area. For if one looks at page 504 of the AEC's "The Effects of Nuclear Weapons" one will see just how large the area of blast and burn may be. "Even bombs of 20-kiloton energy yield," such as were exploded over Japan, this basic report says, "can cause devastation over an area of several square miles. With weapons in the megaton range, the damaged area may cover a hundred or more square miles." So even the "clean" bomb would still have a lot of dirty radioactivity.

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HST Critical of Ike on All Else but Opposition to Ending the Arms Race

Is Truman's "Healthy" Jobless Margin (1950) Now the GOP's Real Goal?

"A Healthy Thing to Have Some Unemployment"—the Truman remark to Arthur Krock of February, 1950, during the pre-Korean war recession, accurately reflects what many well-informed correspondents here believe (but dare not write) is the real Republican big business attitude to the current slump. The only logical framework for Administration inaction is a belief that now is the time to shake down the labor movement, drain its swollen treasuries and stop the upward trend of wages. The Treasury and the Texas oligarchs in both parties believe "a readjustment" is overdue. Economic stimulants by tax cuts and pump priming might mean a return to full employment. Without that "healthy margin" of joblessness, labor has the upper hand in wage bargaining. It should be kept in mind that while smaller businesses thrive only on the upward swings of the business cycle, the top brackets can benefit by deflation, absorbing hard-hit smaller competitors and buying up properties at distress prices.

On One Subject Truman Backs Ike, as Acheson backs Dulles and that is opposition to a summit meeting and relaxation of world tension. His first instinct is still, as shown by his testimony before House Banking and Currency, to reach for bigger arms orders as the main prop of an inflationary economy. His largest spending recommendation was for a $3 billion increase in arms expenditure over Ike's budget in the fiscal year beginning July 1 and an additional rise of 500 millions a year every year thereafter until 1964. Perpetual inflation through perpetual tension and an endless arms race is still the easy way to have full employment without the need for hard thinking or hard battling with prime economic problems.

The Republicans, The Rich Man's Party, is for deflation; the Democrats, the poor man's party, is for inflation. This rough generalization adequately sums up the contrasting real attitudes. Planning is anathema to both; "free enterprise" is a sacred bi-partisan shibboleth. The need for more fundamental measures is indicated by the situation in our basic industrial material — steel. Steel production in March was 41 percent below last year but Tom Campbell, editor of the authoritative *Iron Age*, predicts an increase in steel prices of $5 to $7 a ton on July 1—to "recover" an expected two to four cents an hour cost-of-living adjustment in steel wages.

Lower Steel Prices could help recovery in a wide range of industry from housing to consumer durables, including autos. But how stop a slump when steel prices rise while business activity declines? Steel plants shut down, preparing to "sit it out" until order backlogs rise. The steel combine prefers to exact a higher toll on a dwindling volume of activity rather than encourage recovery by responding to supply-and-demand with lower prices. Not the free market but steel company fiat determines steel prices. Steel governs the market, instead of the market governing steel. But if prices so important to recovery are to be fixed by a form of "government," shouldn't it be the U. S. rather than U. S. Steel? The Democrats are as frightened of such questions as the Republicans.

Invitation to Washington Readers

Readers in the Washington area are invited to hear I. F. Stone speak on "Peace in the Missile Age: The Final Challenge to Social Science" at the closing session of the Annual Spring Conference at Howard University, Friday, April 25 at 8 p. m. in the Auditorium (Engineering and Architecture), 2400 block Sixth Street, N. W. No admission charge.

Readers are also invited to hear a "Report from the South" Sunday afternoon, April 27, 2:30 to 5 p. m., in the Asbury Methodist Church, 11th and K Sts., N. W. Aubrey Williams and speakers from seven Southern States will report on the Negro's fight for voting rights. The Southern Conference Educational *Fund is the sponsor. No admission charge.*

On and Off the Ticker Tape from the Capitol and Round the World

Plus Ca Change: Krushchev in an interview with the Paris *Figaro* (April 9) on the Jewish question in Russia—it seems to have one again—criticized the Jews as "too individualistic." To anti-Semites in the capitalist world Jews have always been "too communistic." Krushchev's vulgar generalizations, in a country where Jews played a major part in both the reformist and revolutionary wings of the Marxist movement, are an appalling testimonial to the failure of the Bolshevik revolution in 40 years to wipe out racial prejudices even in the thinking of its top leadership. . . .

Scholarship? In the uproar over "SPX," the crackpot attack on the Supreme Court, the important point overlooked is the light this incident throws on the mentality of Jules G. Sourwine, chief counsel of the Senate Internal Security subcommittee. He described it as a "work of some scholarship" and is responsible for printing the attack separately so it could be circulated as a Senate document instead of buried in the voluminous testimony on the Jenner bill to reduce the Court's jurisdiction. Sourwine was eased out of his job two years ago after he began to investigate the *New York Times* for Communist influence, but has since returned.

Lower Court Revolt? The Supreme Court's agreement last Monday to hear Lloyd Barenblatt's appeal from a conviction for contempt of the House Un-American Activities Committee should help to clarify the meaning of the *Watkins* decision. A conservative majority led by Judge Prettyman on the Court of Appeals for the District of Columbia to which the Barenblatt case was remanded last year for reconsideration in the light of *Watkins* has consistently treated that ruling as if it placed no real limits on Congressional investigations.

Trouble In Spain is predicted by a Madrid dispatch in the London *Sunday Times*, April 13, which says never since the last days of pre-war dictator Primo de Rivera "has criticism of a Spanish government been more widespread or more bitter."

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A Clean-Cut Travel Decision by the Supreme Court Is Unlikely

(*Continued from Page One*)

Rome and as recent as Stalin's Russia. Either one risks letting some crimes go unpunished or one risks an atmosphere of terror in which no one is safe. This is particularly true in the field of political offenses. How does one tell where criticism becomes subversion? How does one distinguish a "real" liberal from a disguised Communist? And if the latter is to be denied a passport, why not a telephone, or a license to drive an automobile? To cut loose from the moorings which guarantee freedom of discussion and limit punishment to crimes proven in a court of law is to move into a dark morass in which no one is safe.

III

It is not likely that a majority of the Court can be mustered for some such reaffirmation of fundamental principles. The Court, particularly the Chief Justice, seemed wrought up over the use of secret evidence in the Dayton case, as eloquently pleaded by his counsel, Harry Rand. But there was no visible revulsion against the imposition of political conditions on the right to travel in *Kent* and *Briehl,* as ably argued by their counsel, Leonard Boudin. The cold war has put too many constitutional safeguards in deep freeze. A good guess is that the Court will dodge basic issues and seek only to put limits on the State Department's passport practices. This would be in keeping with the pattern of the whole post-McCarthy period, in which some security abuses have been curtailed but police state practices in a milder form have been allowed to become institutionalized.

An Easy Dodge Available

The Court can, for example, dodge the constitutional issue of a right to travel by deciding that there is no adequate statutory basis for the State Department's passport regulations. But this will invite passage of a restrictive law by Congress and only postpone the issue. The law as it now stands in the Internal Security Act of 1950 denies passports to anyone who is a member of any organization finally determined by the Subversive Activities Control Board to be Communist.

The State Department regulations go far beyond this law.

Travel for Any Purpose

"Under the regulations, the purpose of the citizen's travel is made irrelevant. Thus, here, the Department did not challenge the petitioners' stated purposes for traveling—in the one case to attend a medical convention, and in the other to paint pictures. In each case, the Department ruled that the petitioner's past political associations constituted a bar to his travel without regard to the purposes."

—Brief for Rockwell Kent and Dr. Walter Briehl.

They deny passports not only to members of the Communist party but to those whose resignation the Department does not regard as bona fide. They also deny passports to persons who may never have been Communists but whom the Department suspects of going abroad to "advance the Communist movement." The Department claims these regulations are in the spirit of the 1950 Act. And, indeed, if Communists are so dangerous that they must be denied the right to travel, what of those who resign merely to evade legal sanctions, or who are not members but may be doing the party's biding? Once the notion is established that Communists are somehow outside the law, it is difficult to keep the exception from growing.

The Court was shocked by the secret evidence issue. But if Communists are so dangerous that their constitutional rights of travel may be suspended, why not their constitutional right to a fair trial? Once police state premises are accepted, it becomes more difficult to combat the argument that evidence should be kept secret lest it destroy the government's precious network of informers and techniques of surveillance. The burden of proof is quietly shifted to the accused, and there is an unspoken assumption that it is too bad if some innocent people are hurt but. . . .

All this flows from what may properly be called a witch hunt, i.e. the superstitious attribution to a hounded minority of occult powers for harm far beyond its apparent size. In the Soviet bloc, the "witches" are "counter-revolutionaries." Here they are Communists. It is this demonology which has undermined freedom in America. Until it is dissipated neither the right to travel nor any other basic liberty will be secure.

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